

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

5 ELISA SERRANO (aka Elisa) NO. CV-05-0364-LRS
Serrano Vasquez),
6 Plaintiff,) ORDER GRANTING DEFENDANT'S
7 v.) MOTION FOR SUMMARY JUDGMENT
8 UNITED STATES CITIZENSHIP AND)
9 IMMIGRATION SERVICES,)
10 Defendant.)

On December 18, 2006, Defendant United States Citizenship and Immigration Services ("Defendant") filed a motion for summary judgment. (Ct. Rec. 20). Plaintiff filed a timely response to Defendant's motion for summary judgment on January 30, 2007. (Ct. Rec. 29). Plaintiff, however, provided no specific set of facts in opposition to Defendant's motion for summary judgment. Pursuant to Local Rule 56.1(d), the failure to file a statement of specific facts in opposition to a motion for summary judgment allows the Court to assume the facts as claimed by the moving party exist without controversy.

BACKGROUND

Plaintiff seeks de novo review of the denial of her application for Naturalization by Defendant. (Ct. Rec. 4). Plaintiff's application was denied when Defendant determined she was ineligible for naturalization because she had not maintained good moral character. Specifically, Defendant found that Plaintiff had lied on her application with the intent to gain immigration benefits.

1 On February 1, 1997, Plaintiff was arrested by Immigration
2 and Naturalization officials and charged with alien smuggling.
3 (Ct. Rec. 22, p. 1). On or about February 9, 2002, Plaintiff
4 filed an application form for Application for Naturalization.
5 (Ct. Rec. 22, p. 2). As part of the application, she was asked if
6 she "ever knowingly and for gain helped any alien to enter the
7 U.S. illegally." She responded "no." (Ct. Rec. 22, p. 2). The
8 application additionally asked whether she had ever been
9 "arrested, cited, charged, indicted, convicted, fined or
10 imprisoned for breaking or violating any law or ordinance."
11 Again, she responded "no." (Ct. Rec. 22, p. 2).

12 While processing Plaintiff's application for naturalization,
13 Defendant discovered the 1997 smuggling arrest. (Ct. Rec. 22, p.
14 2). Plaintiff was interviewed on September 13, 2004. (Ct. Rec.
15 22, pp. 2-3). She indicated that she never knowingly and for gain
16 helped any alien to enter the U.S. illegally and has never had any
17 problems with immigration at the border or anywhere else. (Ct.
18 Rec. 22, p. 3).

19 On January 7, 2005, Plaintiff's naturalization petition was
20 denied for lack of good moral character because she had made false
21 statements while under oath and because of her 1997 smuggling
22 activity. (Ct. Rec. 22, p. 3).

23 On appeal from this determination, Plaintiff admitted to the
24 smuggling, but stated that she did it "without any bad intention."
25 (Ct. Rec. 22, p. 3). In a notarized statement, she stated that
26 she wished she could have explained "all this situation but [she]
27 was sure that [she] was not able too, [sic] [she] also knew that
28 [she] was going to get this kind of answer." (Ct. Rec. 22, p. 3).

1 Plaintiff asked for forgiveness and explained that she "had to do
 2 everything that [she] could do for [her] children." (Ct. Rec. 22,
 3 p. 3).

4 On July 22, 2005, after consideration of all the evidence and
 5 testimony in the case, the denial of Plaintiff's naturalization
 6 application was affirmed. (Ct. Rec. 22, p. 5). Plaintiff was
 7 found to be ineligible because of a lack of good moral character.
 8 (Ct. Rec. 22, p. 5).

9 **SUMMARY JUDGEMENT STANDARD**

10 Summary judgment is appropriate when it is demonstrated that
 11 there exists no genuine issue as to any material fact, and that
 12 the moving party is entitled to judgment as a matter of law. Fed.
 13 R. Civ. P. 56(c). Under summary judgment practice, the moving
 14 party

15 [A]llways bears the initial responsibility of informing the
 16 district court of the basis for its motion, and identifying
 17 those portions of "the pleadings, depositions, answers to
 18 interrogatories, and admissions on file, together with the
 affidavits, if any," which it believes demonstrate the
 absence of a genuine issue of material fact.

19 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[W]here the
 20 nonmoving party will bear the burden of proof at trial on a
 21 dispositive issue, a summary judgment motion may properly be made
 22 in reliance solely on the 'pleadings, depositions, answers to
 23 interrogatories, and admissions on file.'" *Id.* Indeed, summary
 24 judgment should be entered, after adequate time for discovery and
 upon motion, against a party who fails to make a showing
 26 sufficient to establish the existence of an element essential to
 27 that party's case, and on which that party will bear the burden of
 28 proof at trial. *Celotex Corp.*, 477 U.S. at 322. "[A] complete
 failure of proof concerning an essential element of the nonmoving

1 party's case necessarily renders all other facts immaterial." *Id.*
2 In such a circumstance, summary judgment should be granted, "so
3 long as whatever is before the district court demonstrates that
4 the standard for entry of summary judgment, as set forth in Rule
5 56(c), is satisfied." *Id.* at 323.

6 If the moving party meets its initial responsibility, the
7 burden then shifts to the opposing party to establish that a
8 genuine issue as to any material fact actually does exist.

9 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
10 586 (1986). In attempting to establish the existence of this
11 factual dispute, the opposing party may not rely upon the denials
12 of its pleadings, but is required to tender evidence of specific
13 facts in the form of affidavits, and/or admissible discovery
14 material, in support of its contention that the dispute exists.
15 Fed. R. Civ. P. 56(e); *Matsushita*, 475 U.S. at 586 n. 11. The
16 opposing party must demonstrate that the fact in contention is
17 material, i.e., a fact that might affect the outcome of the suit
18 under the governing law, *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
19 242, 248 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987), and that the
20 dispute is genuine, i.e., the evidence is such that a reasonable
21 jury could return a verdict for the nonmoving party, *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9th Cir. 1987).

22 In the endeavor to establish the existence of a factual
23 dispute, the opposing party need not establish a material issue of
24 fact conclusively in its favor. It is sufficient that "the
25 claimed factual dispute be shown to require a jury or judge to
26 resolve the parties' differing versions of the truth at trial."

1 *T.W. Elec. Serv.*, 809 F.2d at 631. Thus, the "purpose of summary
 2 judgment is to 'pierce the pleadings and to assess the proof in
 3 order to see whether there is a genuine need for trial.'" *Matsushita*, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)
 4 advisory committee's note on 1963 amendments).

5 In resolving the summary judgment motion, the court examines
 6 the pleadings, depositions, answers to interrogatories, and
 7 admissions on file, together with the affidavits, if any. Fed. R.
 8 Civ. P. 56(c). The evidence of the opposing party is to be
 9 believed, *Anderson*, 477 U.S. at 255, and all reasonable inferences
 10 that may be drawn from the facts placed before the court must be
 11 drawn in favor of the opposing party, *Matsushita*, 475 U.S. at 587
 12 (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)
 13 (per curiam)). Nevertheless, inferences are not drawn out of the
 14 air, and it is the opposing party's obligation to produce a
 15 factual predicate from which the inference may be drawn. *Richards*
 16 v. *Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal.
 17 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987).

18 Finally, to demonstrate a genuine issue, the opposing party
 19 "must do more than simply show that there is some metaphysical
 20 doubt as to the material facts. Where the record taken as a whole
 21 could not lead a rational trier of fact to find for the nonmoving
 22 party, there is no 'genuine issue for trial.'" *Matsushita*, 475
 23 U.S. at 587 (citation omitted).

24 DISCUSSION

25 The issue before the Court is whether, as a matter of law,
 26 Plaintiff lacks the "good moral character" requirement for
 27 naturalization.

1 The Immigration and Nationality Act expressly requires an
2 applicant for naturalization to be a person of good moral
3 character. 8 U.S.C. § 1427(a)(3). Pursuant to 8 U.S.C. §
4 1101(f), no person shall be regarded as a person of good moral
5 character who "has given false testimony for the purpose of
6 obtaining any benefits under this chapter." 8 U.S.C. §
7 1101(f)(6). Pursuant to 8 C.F.R. § 316.10, an applicant shall be
8 found to lack good moral character if she "[h]as given false
9 testimony to obtain any benefit from the Act, if the testimony was
10 made under oath or affirmation and with an intent to obtain an
11 immigration benefit; this prohibition applies regardless of
12 whether the information provided in the false testimony was
13 material, as in the sense that if given truthfully it would have
14 rendered ineligible for benefits either the applicant or the
15 person on whose behalf the applicant sought the benefit." 8
16 C.F.R. § 316.10(b)(2)(vi). Based on the foregoing, a
17 naturalization applicant lacks good moral character if she has
18 given false testimony in order to gain any benefit from the
19 Immigration and Nationality Act.

20 The statements Plaintiff made in her application and during
21 her interview were not truthful. Plaintiff does not, and can not,
22 contest this fact. (Ct. Rec. 22; Ct. Rec. 29, pp. 3-4). It is
23 undisputed that she was arrested and charged with alien smuggling
24 in February of 1997. (Ct. Rec. 22, p. 1). Plaintiff explained in
25 a notarized statement that she knew that she "was going to get
26 this kind of answer" but that she "had to do everything that [she]
27 could do for [her] children." (Ct. Rec. 22, p. 3). Plaintiff
28 made false statements in her application and interview in order to

1 obtain immigration benefits. "[N]o person who has given false
2 testimony for the purpose of obtaining benefits" shall be found to
3 be a person of good moral character. 8 U.S.C. § 1101(f)(6); 8
4 C.F.R. § 316.10(b)(2)(vi). While Plaintiff's response alleges
5 that her false statements were made under duress¹ and because she
6 did not understand the immigration officials' questions (Ct. Rec.
7 29), Plaintiff has failed to provide a substantiated basis for a
8 finding that, as a matter of law, she meets the "good moral
9 character" requirement for naturalization.

10 In any event, Plaintiff has failed to establish a valid claim
11 of duress as alleged. In the criminal context, the duress defense
12 consists of three elements, each of which the defendant must prove
13 by a preponderance of the evidence: (1) an immediate threat of
14 death or serious bodily injury, (2) a well-grounded fear that the
15 threat will be carried out, and (3) lack of a reasonable
16 opportunity to escape the threatened harm. *U.S. v. Verduzco*, 373
17 F.3d 1022, 1030 (9th Cir. 2004). Plaintiff's response memorandum
18 fails to make a showing, by affidavit or otherwise, that would
19 cause a reasonable person to believe that Plaintiff was coerced,
20 under the immediate threat of death or serious bodily injury, to
21 act in the manner in which she acted. Plaintiff's bare assertion
22 of duress, without more, does not provide the facts necessary to
23 prove the defense. Accordingly, even if a duress defense was
24 applicable in the naturalization context, Plaintiff has failed to
25 establish a valid defense of duress.

26
27 ¹Plaintiff asserts that she is a victim of domestic violence and feared
28 that her husband would harm her if she answered the Immigration officials'
questions truthfully. (Ct. Rec. 29, p. 1). Plaintiff cites the Violence
Against Women Act, as support for her duress defense. However, this statute
does not apply to applications for naturalization. Moreover, as noted in the
body of this order, Plaintiff has failed to substantiate her claim of duress.
ORDER - 7

1 There is no genuine issue for trial with respect to
2 Plaintiff's Petition for Review. (Ct. Rec. 4). Therefore, the
3 undersigned judicial officer finds that Defendant has met its
4 burden as the party moving for summary judgment.

CONCLUSION

For the reasons discussed above, the Court **GRANTS** Defendant's motion for summary judgment. (Ct. Rec. 20).

8 **IT IS SO ORDERED.** The District Court Executive is hereby
9 directed to enter judgment in favor of Defendant and against
10 Plaintiff, file this Order, provide a copy to counsel for
11 Plaintiff and Defendant, and **CLOSE** this file.

12 DATED this 7th day of August, 2007.

S/Lonny R. Suko
LONNY R. SUKO
UNITED STATES DISTRICT JUDGE